IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6775 of 2004
With
SPECIAL CIVIL APPLICATION No. 25511 of 2006
To
SPECIAL CIVIL APPLICATION No. 25527 of 2006
With
SPECIAL CIVIL APPLICATION No. 21187 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JM BAXI & CO - Petitioner(s)
Versus
KANDLA PORT TRUST - Respondent(s)

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Appearance :
MS PAURAMI B SHETH for Petitioner(s) : 1,MR MANAV A MEHTA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR MG NAGARKAR for Respondent(s) : 1,
MR ALPESH RAJPURIYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 30/04/2007

ORAL JUDGMENT

1. The learned Counsel for the petitioners, Ms.Sheth as well as Mr.Nagarkar, learned Counsel for the Board of Port Trust in SCA Nos.6775 of 2004 and 21187 of 2006 and Mr.Vays with Mr.Alpesh Rajpuriya, learned Counsel for the Board of Port Trust in SCA Nos.25511 to 25527 of 2006 conceded to the position that common questions arise for consideration in all the petitions and, therefore, all the matter may be simultaneously considered.
2. It may be recorded that Special Civil Application No.6775 of 2004 is admitted and is listed today for final hearing, whereas the remaining Special Civil Applications are at the admission stage. However, it appears to the Court after hearing the learned Counsel appearing for both the sides that a short points are involved for consideration of this Court and, therefore, all the matters are disposed of finally.
3. As all the matters are inter-connected and common questions arise for consideration, they

are being considered by this common order.

4. The petitioners in all the petitions have approached this Court for challenging the legality and validity of the notices calling upon the petitioners for making payment of the short-levied charges for the concerned connected shipment by the concerned petitioners as the agents. The only Special Civil Application No.25511 of 2006 is preferred by the Association of Shipment Agents being the representative of its members to expause the cause.

5. Heard Ms.Paurami Sheth, learned Counsel for the petitioners in all the petitions, Mr.Nagarkar as well as Mr.Vyas with Mr.Rajpuriya, learned Counsel for the Board of Port Trust in the connected Special Civil Applications.

6. Upon hearing the learned Counsel appearing for both the sides, it appears that the principal grievance on the part of the petitioners in the present petitions are that whenever the Port Trust is proposing to recover the amount of short-levied charges as per Section 56 of the Major Port Trust Act, 1953 (hereinafter referred

to as “the Act”), it is obligatory on the part of the Trust to record the satisfaction for recovery of the short-levied amount and to issue notice and to have adjudication and the recovery can be affected only after the proper adjudication. It is the grievance of the petitioners in all the petitions that notices have been issued, whereas in some of the cases, the petitioners did reply, but there is no adjudication thereafter or there is no fresh order. Whereas as per the respondent Trust, since after the notice, there was no representation in majority of the cases, the Board proceeded to recover the amount as if there is no opposition and, therefore, there is no question of adjudication and hence, recovery is justified.

7. However, the learned Counsel appearing for the respondent Trust are in agreement on the point that the first notice issued by respondent Trust for recovery of the short-levied amount to the concerned agent is to be treated as show-cause notice under Section 56 of the Act.

8. It appears that the Scheme of Section 56 of the Act is clear in its words. It contemplates a notice, reply, if any, and the adjudication thereafter. It may be that in a given case, if there is no reply or opposition, Trust may proceed to recover the amount, but in a case, where there is opposition to the short-levied amount on the ground that the same is not justified or that it is time barred or that the amount was rightly paid at the relevant point of time, it would be for the concerned appellant Trust to adjudicate upon the said issue through the competent authority and to render the decision. It is only after the decision is rendered by the competent authority of the Board, the recovery can be insisted upon in accordance with the Section 56 of the Act.

9. If all cases are examined in light of the aforesaid position, it does appear that after the first notice to each of the concerned agent, which is treated as show-cause notice as declared by the learned Counsel for both the sides, there is no reply in certain cases and

there are replies in certain cases. However, the fact remains that in none- of the cases, there is any adjudication by the Board and the grievance as sought to be raised in the present petitions is that the amount, which is sought to be recovered as short-levied amount is not justified since there is no adjudication whatsoever.

10. Therefore, considering the facts and circumstances and more particularly in view of the Scheme of Section 56 of the Act and having considered the declaration made by the learned Counsel appearing for respondent Board, I find that if the first notice issued by the Board to the concerned agent is treated as show-cause notice so as to enable the concerned agents to submit their reply and if the adjudication is made by the competent authority of the Board after giving opportunity of hearing to the concerned agents, the same would meet with the ends of justice and it would be rather in accordance with the Scheme of Section 56 of the Act.

11. Under the above circumstances, I find that the following directions shall meet with the ends of justice:-

(a) The first notice issued to the concerned person(s)/agent(s) for recovery of the short-levied amount shall be treated as show-cause notice under Section 56 of the Act.

(b) It would be open to the concerned person(s)/agent(s) to file reply to the show-cause notice within a period of one month from today.

(c) After the reply is submitted within the aforesaid stipulated period or in absence of any reply after the expiry of the aforesaid period, the competent authority of the Board shall examine the matter and, if required, as observed earlier, shall further adjudicate the matter and shall pass

appropriate orders after giving opportunity of hearing to the person(s)/agent(s) in the event there is any opposition by the said person(s)/agent(s) and the said exercise shall be completed preferably within a period of four months from today.

(d) After the final decision of the competent authority of the Board under Section 56 of the Act, if any of the petitioners are aggrieved by the final order, which may be passed by the Board under Section 56 of the Act as indicated hereinabove, it would be open to the concerned person(s)/agent(s) to resort to the remedies for challenging the same as may be available in law.

(e) Until the aforesaid order is passed by the competent authority of the Board and communicated to the persons concerned, the interim order passed in Special Civil Application No.6775 of 2004 and No.21187 of 2006 shall continue to operate and in the

remaining petitions, no coercive action shall be taken, until the order is passed and communicated to the concerned person(s)/agent(s).

12. All petitions are disposed of in terms of the aforesaid directions. The petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly. No order as to cost.

30.4.2007 **(Jayant Patel, J.)**

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